

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP.No. 559/2004

Judgment delivered on: November 22 ,2007

Uttar Pradesh State Road Transport Corp. Appellant.

Through: Ms.Neha Goyal, Advocate

versus

Smt. Indu & Ors.

..... Respondents

Through: Mr.A.K.Verma, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

Aggrieved with the impugned award the appellant has assailed the findings of the Tribunal mainly on four grounds. Firstly, the bus of the appellant had not

caused the accident; secondly, the respondent injured being the police constable was entitled to medical reimbursement and still the Tribunal has awarded a sum of Rs.45,000/- towards medical expenses; thirdly, amount of Rs.15,000/- has been awarded towards pain and sufferings and fourthly, the Tribunal has considered the future prospects for awarding the compensation.

Before dwelling on the merits of the case, it would be appropriate to give the brief facts of the case as under:

On 1.7.96, the respondent had boarded the bus No. UP-14B-2510 from Khekhra for coming to Delhi at about 7.45 A.M., the conductor continued to get the passengers boarding in the bus and the said bus became over crowded. The driver of the said bus was driving at a very high speed, without caring for the traffic rules . When the bus crossed the village Mandola at Sahranpur to Delhi Road, the driver while trying to overtake another vehicle in a very rash and negligent manner got imbalanced the bus and the door of the bus got opened due to which the respondent fell down on the road from the said bus. The respondent sustained

head injuries and suffered several injuries on other parts of the body. She was admitted in the GTB hospital and continued to get the treatment but she could not be completely recovered and had suffered permanent disability to the extent of 75%.

Learned counsel for the appellant contends that no FIR was registered against the driver of the alleged offending vehicle. Counsel further contends that daily diary entry was also not proved as the same was stated to have been destroyed. Counsel also contends that except one witness there was no other eye witness. Counsel for the appellant contends that testimony of the driver was not relied upon by the Tribunal who in his deposition clearly stated that his bus was not involved in the accident.

On the second contention, counsel for the appellant contends that the respondent was entitled to medical reimbursement and if she had not applied for medical reimbursement within the stipulated period, then the appellant could not have been fastened with the liability to pay the medical claim of the respondent. Relying upon

the Second schedule, on the third ground, counsel for the appellant contends that for pain and sufferings the amount as laid down in the Second Schedule is Rs.15,000/- and the same position is with regard to the grant of compensation towards special diet. Counsel also contends that no evidence was adduced by the respondent to prove grant of any compensation for future prospects.

Per contra, Mr. A.K.Verma counsel for the respondent seriously refutes the contentions raised by the counsel for the appellant. He states that the Tribunal has passed just and fair award in favour of the respondent. He contends that the respondent being an injured person then she herself is the best witness to prove the negligence. He further states that her deposition was duly supported by another eye witness who entered the witness box as PW-6. Counsel also contends that daily diary no. 12A was duly recorded, therefore, it cannot be said that the accident was not reported to the police. Counsel also contends that due to the serious injuries suffered by the respondent, the respondent could not claim reimbursement within the

prescribed period. On future prospects, contention of the counsel for the respondent is that the respondent had duly proved in her deposition that she would have risen up to the rank of Assistant Commissioner had she not received injuries and suffered disability to the extent of 75%.

The present case involve the respondent who was a head constable in the police. The respondent claimant had suffered injuries due to the occurrence of the accident in which she fell down from the bus because of the over speeding of the bus due to which the bus lost control while overtaking another vehicle. The respondent being injured herself is the best witness to the exact occurrence of the accident and besides that her deposition is duly supported by the testimony of PW-6, who categorically stated that the offending bus of the appellant was being driven at a very fast speed and when it took a little turn, one lady passenger from the bus fell down. Ex. PW-5, Head Constable also proved the copy of the daily diary which is exhibited as Ex.PW-5/A and therefore, it cannot be said that the accident was not reported to the police. It is a settled legal position

that unlike in a criminal case the case before Tribunal is not to be proved beyond any reasonable doubt. The enquiry before the Tribunal is summary in nature. I do not find any infirmity in the finding of the Tribunal holding the driver of the appellant vehicle negligent in driving the said vehicle. The contention of the appellant on the aspect of negligence is thus repelled.

As regards the contention of the counsel for the appellants on the grant of Rs.45,000/- towards medical expenses, I do not find any force in the contention of the counsel for the appellant as the respondent was not given any medical reimbursement by the Department only on account of the fact the respondent could not apply for medical reimbursement within the prescribed period of 90 days. It is evident that the respondent had suffered serious injuries which led to the permanent disability to the extent of 75% and therefore, it cannot be ruled out that the respondent must be in a great shock and trauma and might not have been in a position to take timely steps to claim medical reimbursement. This contention of the counsel for

the appellant is also rejected.

On the grant of compensation towards pain and sufferings and for special diet, reliance has been placed by the appellant on the Second Schedule of the Motor Vehicles Act. The structured formula in the Second Schedule was brought in the Statute book in the year 1994 and no revision since then has been made therein by the Central Government and therefore, as per the recent pronouncement of the Supreme Court in the case of **United India Insurance Co. Ltd. v. Patricia Jean Mahajan,(2002) 6 SCC 281**, the structured formula in the Second Schedule has to be treated as a guide and the same cannot be taken as a ready reckoner for granting compensation under various heads. The relevant para of the said judgment is reproduced as under:

“It is further observed that multiplier method is the accepted method for determining just compensation, which also brings about uniformity and certainty of award. In para 18 it has however, been observed about the Second Schedule that neither the tribunals nor the court can go by the ready reckoner, it can only be used as a guide.”

The compensation granted by the Tribunal for pain and suffering thus does not call for any interference.

On the aspect of the future prospects, the Tribunal has taken into consideration the evidence adduced by the respondent wherein it was categorically stated that in normal course she would have reached up to the rank of Assistant Commissioner and it is only on account of the permanent disability, that her future prospects have been blocked. There is thus no merit in the last submission of counsel for the appellant as well.

I do not find any infirmity in the finding of the Tribunal.

Dismissed.

November 22, 2007
J.
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KAILASH GAMBHIR